

U.S. SMALL BUSINESS ADMINISTRATION

Regulatory Enforcement Fairness Hearing

Des Moines, IA

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PROCEEDINGS

[START DES MOINES, IA.MP3]

JOE FOLSOM: Good morning. I'm Joe Folsom, District Director for the Small Business Administration of Iowa. I'd like to thank you for coming to this morning's Regulatory Fairness Forum. Before we get the forum started I'd like to take a brief moment to acknowledge some of our guests and attendees here today. First of all I'd like to thank our host this morning, The Iowa Department of Economic Development. We especially appreciate the efforts of Sherry Timmons, the Regulatory Assistance Coordinator here at IDED, for her help with today's forum, and Jan Lison. Today we have with us Dean Cotton, who is a Deputy Regional Administrator from our SBA office in Kansas City, along with Wendell Bailey, Regional Advocate for the Small Business Administration,

WENDELL BAILEY: Thank you Joe.

MR. FOLSOM: You're welcome. Jim Paisley, our Public Information Coordinator for the region; Jan Lison, IDED's Small Business Liaison; Jan Owens-Bruney, from the Institute for Social and Economic Development; Betty Haymon from IRS; Christie Timmerman from IRS, State Senator Paul McKinley, Steve Carmichael from OSHA, Andy Warren from NFIB, Christie Hirschman from the State Ombudsman's Office, Joe Rice, State Legislative ARRC, Mike Stofol, Department of Labor; Tom Hicks, from the Department of Labor; and Peggy Sielman from Congressman King's office. I hope I've gotten everyone; if not I apologize. At this time, though, I'd like to introduce Jack Rife, the regional representative from the Department of Labor in Des Moines. Jack is a long-time Iowan; he's been a banker, a farmer, for eighteen years a State Senator where he served on numerous committees, and was a minority leader for the 74th, 75th, and 76th general assemblies. Jack will make some welcoming remarks and then introduce the Ombudsman.

JACK RIFE: Well thank you Joe. I appreciate everybody being here. I think this is an important meeting and let me talk about rules and regulations as far as small business people. First I'd say that business is good and regardless of what you might hear in the media or see on TV about sub-prime and everything else, [unintelligible] may bore you because I haven't had a chance to put these out because my secretary's out, but I'll tell you what has happened here in the last several years. Unemployment rate a full percentage lower than it was during the '90s; it has consistently been there. 8.3 million more new jobs since August of 2003. In 2006 alone 2.3 million jobs were created. We're at an all-time high of 138 million, 35.5 million more jobs than the pre-recession year, February 2001. Forty-six consecutive months of job [unintelligible]. And I can go on and on because we have more bullets here of how the economy is [unintelligible]. And the

economy is good. And sometimes I think we like to think it's not good. And part of the reason it's good is the people sitting around this room and in the Job Creation, Small Business Development and things like that.

Now, I think what gets headlines once in a while are the big companies. If you're in Iowa here we're talking about Principal [unintelligible]; that makes our Des Moines Register. And certainly they're important. If you have Principal closed down tomorrow, you have 8,000 people in the metro area out of work. By and large the backbone of this state, and the backbone of this region and this nation, are its small businesses that don't the credit that probably they deserve. John Deere for example: it started with one man in a little blacksmith shop who had an idea about how to plow that heavy soil over [unintelligible] plow, and we have John Deere today. I'm not sure they even make a [unintelligible] plow anymore, because nobody plows. Somebody is probably out there but John Deere probably isn't, because they've moved on to garden tractors and everything else. But they're an important part of our economy. Still as I say the backbone of this state and this nation I think are small businesses and we have to be very cognizant of how we may impact them, particularly from a regulation standpoint.

I think I can speak from some experience, as you heard I was a legislator, and yes we love to solve problems, and we love to get reelected. And so we're always trying to pass that bill that solves that problem, impacts [unintelligible]. That's what we're constantly trying to do. And that bill before we're all done might be one hundred pages or whatever, and we think we've got everything covered in that bill, but lo and behold we get authority of that legislation and the same is true in Congress. [unintelligible] and they have to write rules and regulations, then they go to Joe's committee here, and they've got a little rules committee that meets once a month to prove those rules that [unintelligible]. And you think there's pressure once in a while on legislators as the bill goes through Congress or goes to the state legislator, you're going to see pressure that builds on those committee people because some of those rules have real impact on individuals, and there can be some real pressure on legislators who sit on that rules committee. Now do we need rules? Yeah, we probably need rules because unfortunately in our society there are people out there that want to beat the game; they're looking for that free ride. So we have to have rules in place somewhere along the line to take care of it, but at the same time we need to constantly be aware of the impact that we cause on those people that we're trying to help. In most cases that small business is underfinanced for one thing, it's on a shoestring; it's probably underemployed, working more hours than normal. That individual who started that small business may actually be in a production line or be on a telephone trying to market his product. He

doesn't have legal counsel sitting at the desk next to him. It's probably a lawyer downtown dealing with a divorce case, got a mortgage deal going someplace else, probably hasn't read the latest [unintelligible] regs or OSHA [unintelligible] or whatever, doesn't know that he's in violation of state or federal law. And therein lies the problem: he didn't do it maliciously; he thought he was okay, he just didn't have time or she didn't have time to take care of things and therefore they're hit with a fine or penalty or whatever.

So I think it behooves us in government particularly to make sure we reach out and not, I don't want to be critical because in our particular case in labor in a couple of weeks they've got an opportunity [unintelligible] in D.C. and it's designed for minorities, and I think that's good. The other day one of my superiors said well we've got to get people to the Congress. Well it's a little tough for a small business person in Des Moines, Iowa, on a shoestring, underemployed, to buy an airline ticket for D.C. or send one of my employees there. It's probably not going to happen; they don't have the time or the money. So I think we in government need to somehow make sure they get our message down to those small business people of what is compliance, how you can be compliant with our Federal or state regulations, so that they don't get in trouble with fines or penalties down the road. So I think it's good that you have this type of meeting and bring that message out and make sure that we take care of those small business people down the road. Now I said I'll be brief but I have the distinct pleasure of introducing Nick Owens, who I met for the first time and I said, "Welcome to Iowa". Is this your first time in Iowa?

NICHOLAS OWENS: Second.

MR. RIFE: Second? But he's the fifth National Ombudsman that we've had. It was created in 1996 with an act of Congress. He knows that President Bush is interested in regulatory reform, so we know he's got the right man commissioned to do that. He has a background, he created his own company in Mississippi called Nickcom I believe, doing public affairs, government affairs and communications work, and he's also active in politics [unintelligible]. I noted that you started with Senator Trent Lott who I kind of respect [unintelligible], that's a personal opinion, that's not [unintelligible]. [Unintelligible] somebody who's kind of come back from the dead too, Trent Lott's come back and he's going to do well. But Nick went on to be a VP of a Nashville health care technology solutions group, and then in 2002 he had the honor of serving on the transition team for the Bush administration when they entered office. So with that, Nick, we'll turn this thing over to you. Thank you for being here.

MR. OWENS: Jack, thank you very kindly for the warm introduction. It's wonderful to be in the great state of Iowa. As I said this is not my first time, I was here a few years ago for my former boss who's a former state senator here from Iowa, Joann Johnson, who's₄

the Chairman of the National Credit Union Administration, and we're honored that her husband, Brian Johnson, serves on our Regional Regulatory Fairness Board. So they're dear friends and it's great to be back here in Iowa. As you said I am honored to serve as the National Ombudsman, it's wonderful work, and with the National Ombudsman I also created in 1996 ten regional Regulatory Fairness Boards, appointed by the Administrator with concurrence with the administration. And with that I would like to introduce Chairman Tom Schlafly of Missouri, and he can introduce our other Board members and welcome our Board members to make comments.

THOMAS SCHLAFLY: Thank you very much. One of the reasons this is so fulfilling, I should explain my background. I was a lawyer before I opened my own business, a brewery, in 1991, and it's one thing to advise people as to what problems are; it's another to be experiencing it. When it's your name on the loan guarantee it's a whole different feeling from saying, "oh yes it's okay to sign it". Or it's one thing to be the lawyer advising people on what the government regulations mean, and it's another when you're the one paying the fine. So I guess I would say to anyone with a problem to bring to our Board: we've been in your shoes. So with that starting from my right I'd like to introduce Dr. Inez Kaiser from Inez Kaiser and Associates in Overland Park, Kansas. Next to her Joe Balsarotti from Software to Go in St. Peter's, Missouri, and then over to the left Brian Johnson from Capitol Consultants, who's already been mentioned. And is the first commenter then from the NFIB?

MR. RIFE: Well I think first we'll offer comments from our Board.

MR. SCHLAFLY: Oh I'm sorry. Any comments from the Board members?

JOE BALSAROTTI: I'm just pleased to be here and hope we can help some people out.

MR. SCHLAFLY: Okay, Brian?

MR. RIFE: We're in your home state so [unintelligible].

BRIAN JOHNSON: I just welcome everybody and it's been my pleasure to serve for the last year and a half or so, and do any little bit I can. I would, State Senator Rife, without digressing too far, I live in a small town called Penora, and on Friday night you can sit over your local drink of choice without a dozen small business owners and professionals in town and talk about politics and things in the world today, and I'm always searching for something political to put on the table to hear what average people on the street are saying. When I tell them Friday night that legislators are there to help solve problems, they think they're there to create problems. So it's quite a point of discussion I think.

MR. SCHLAFLY: So I guess it's my privilege to turn it back to Nick Owens, and I had not realized before that you too have been in business and you know where we get perspective.

MR. OWENS: That is true, but I was just thinking about your comment about Senator Lott, and whenever he received a call from the president after being elected as Republican whip, he said, "Mr. President, Lazarus here". That certainly supports your comment there. I want to thank our District Director and your terrific team here for SBA and of course the Department of Economic development for the state for the opportunity to hold this forum here, and thank our federal partners who are also here. As I surveyed the current entrepreneurial and small business climate I can truly say there's never been a more exciting time to be a part of America's small businesses. The state of America's 25 million small businesses is stronger than ever before, representing 99.7% of all businesses. Just in the state of Iowa you're looking at 257,000 small businesses -- we deal with a lot of numbers here as you do at the Department of Labor -- and then based on firms with employees, 75,500, of which 97.6% are small businesses under 500 employees, which is 68,000. And it's because of the ingenuity and the leadership of these small business owners, whether they're in the northern part of the state or the western, it's because of their ingenuity and the work that they're doing in the local communities, be it on a farm or local plants or manufacturing facility, that jobs are being created and the state's economy is realizing growth. And as you intimated, with opportunities of success in local business you also know there are challenges. There are regulatory and compliance challenges. Often when I travel, and I do quite a bit, and I say "I'm here from the government and I'm here to help you", folks want to head out the door. I usually say that when somebody's already out the door and time it just right so he's the first one out. But truthfully we are here to help, and our team, our focus, our Regional Regulatory Fairness Board members are here to support small business. President Bush has said many times that the role of government is not to create wealth but the role of government is to create an environment where the entrepreneurial spirit can flourish, you can risk capital, you can achieve the American dream. And the President also knows that unfair regulations and the unfair enforcement of regulations causes small businesses [unintelligible] two of their most precious commodities, their time and their money. That's why in this administration we've been focused to streamline regulations. It's not an easy task but it's a worthy task to help small businesses move forward in an environment of certainty and of effective regulations rather than where they are excessive. Examples of issues that we can address at the National Ombudsman's office are: repetitive audits - repetitive onsite inspections of a plant or operation. Retaliation - it's important for a small business to be able to tell their government both the good and the bad. It may be the experience of a penalty and excessive fine that you

believe. It also may be burdensome compliance measures by a federal agency. And our job, I often say, and my job at the Office of the National Ombudsman and the work of the Regional Regulatory Fairness Board is to help small business owners keep more of their hard earned money in their pockets and decide what to do with it. And of course their two most precious commodities, and I thank you all for being here but it's your time and your money, and Andy you know that with your many members of the NFIB. I appreciate Mr. Bailey for the great work he does in this region and in the state with the Office of Advocacy, and his boss of course is appointed by the President, confirmed by the Senate; they are a team of watchdogs for the federal government. You couldn't ask for a better advocate than Mr. Wendell Bailey. The SBA Office of Advocacy estimates that Federal regulations alone cost small business owners, let's say with less than twenty employees compared with their larger counterparts of five hundred employees, \$7,647 per year per employee, and that's often because they can't spread the cost of super lobbyists and [unintelligible] to represent their issues. And in fact the very smallest firms spend 45% more than their larger counterparts on environmental regulations, 67% on tax compliance. And obviously that money can be better spent to expand the infrastructure of business, build another building on your property, create more jobs, provide health coverage for your employees. We currently recognize, and I hear often with the phone calls that come into my office directly from small business owners, where they can better put that money, and it's not in unfair regulations or the unfair enforcement.

So ultimately what do we do in the Office of National Ombudsman? [Unintelligible] my boss often kids me about that, National Ombudsman, Assistant Administrator for Regulatory Enforcement Fairness. All it means is troubleshooter. And I work in liaison on behalf of small businesses throughout the country, I work closely with Federal agencies like my counterpart from Washington from the Department of Labor, Tom Hicks, and many other agencies including our friends from the IRS here, and I liaise on your behalf, small businesses. And we seek a high-level third party review. So if you're concerned about a particular inspector, special agent of the government, or a letter you received in the mail, we can seek high-level review to ensure fairness of that action, to make sure that it was fair, it wasn't excessive, and it wasn't unfair. Not only do we assist small business, but even in this state like in my home state of Mississippi there are small government entities with populations of under 50,000 so small counties and cities we can also assist with heavy hand that they may experience in [unintelligible] with the Federal government, and also non-profit organizations. The issues that we can not address, that may not relate to excessive or unfair regulatory issues, we do refer to the Office of Advocacy to address. Certainly rules that are promulgated that are considered to evaluate the cost impact and to

ensure that Federal agencies are evaluating the cost of these small businesses, the cost of these regulations rather, on small businesses.

For a little history, again Congress created our office for the Small Business Regulatory Enforcement Fairness Act in '96, created our ten Regional Regulatory Fairness Boards, and with that...this is the most Board members I've had at recent hearings, I certainly appreciate their dedication to be here. It's an important plus to get outside the D.C. Beltway and Tom hears me a lot, I like to get out of Washington, but truthfully to listen, learn, and better understand the concerns of small business owners. One important aspect of my job is accountability, and I appreciate working closely with a terrific Congressional delegation we have here in Iowa. You have of course Senator Harkin of the Small Business Committee and two Congressmen serving well on the Small Business Committee in Congressman King as well as Braley. And of course I work closely with Senator Grassley on issues on the Senate Finance Committee as it relates to some pharmaceutical industries. So we certainly appreciate that. But working with Congress and being accountable produces a report, so when Congress created this office they wanted to see where the action is every year, so I issue an annual report to Congress, rate Federal agencies A to F on their responsiveness, quality of response, compliance, assistance, and non-retaliation policies. So if there's a time when you get agencies' attention it's when you're rating them A to F. I will say overall Federal agencies are doing a good job and working with small businesses. Do we have more to do? Of course we do and we work closely with our Federal partners in that regard.

I can give you success story after success story but also tell you I won't guarantee 100% positive resolution on every case that comes to my desk, but we guarantee 100% of our effort to work on behalf of small businesses. I want to give you a few examples but they could go on all day. I'll give you some examples of success that really helps you regain sustenance and a spring in your step with the work that I do every day and knowing that you can help realize some good work for small businesses ultimately in what we do. One of course in Seattle, there were three grocers who testified at a regional regulatory fairness hearing similar to this that the USDA had disqualified them from the Food Stamp program alleging fraud. Well these three grocers said they did not commit fraud, and to this local community Food Stamps was an important part of providing sustenance and bread on the table for these families in these communities. So they came to our attention and we worked closely with the USDA back in Washington and they reversed their decision realizing that it was a mistake and in fact these small businesses did not commit fraud. One was a general aviation, a small private aviation business here in the Midwest, who were fined \$10,000 for an alleged violation, and the small business owner said he did not commit the violation. He went on and on with the bureaucracy of the

Federal government, the fine was reduced to \$1,750, then \$100. The point was about clearing the integrity of your name, and it wasn't about the amount of money, it was that he did nothing wrong and that is one case that we were able to help resolve that issue. I noticed down in the court area, Court Avenue area, you have breweries, at least good restaurants down there. In Illinois there was a small brew pub that had a dispute with the Department of Labor's Wage and Hour division alleging that the brew master had an issue should it have been hourly or salary. Well that was a business decision for the local brewery and that small business spent over \$7,000 battling it with the Federal government. He contacted our office and we were able to help seek an equitable settlement. Another instance was a Georgia shipping company that was fined \$2000 for an alleged import/export violation. That was another issue where there was an inadvertent error by the federal agencies. I can tell you it may not be a substantive issue of a particular case where hard numbers are hitting your pocketbook. It may be an issue of needing to check on an application that can mean the difference between getting the contract or not within the Federal government. It can be trying to break through, even for us that work in the Federal government, trying to reach the right people can be challenging, even more so if you work in the small business community. So we certainly want to help you navigate the rough seas sometimes that you experience in Federal regulations.

Many years ago former President Ronald Reagan said that at that time his view of the economy could be summed up in a few short phrases, and that was: "if it moves, you tax it", "if it keeps moving, you regulate it", [unintelligible]. Keeping with that premise small businesses, of course, should be operating in an environment where regulations are effective and not excessive. So it is a mission of our office as it is the overall mission of this administration and of my boss, SBA Administrator Steve Preston, to foster a small business friendly regulatory environment within the Federal government and certainly within our own agencies.

I do want to touch on another important aspect outside of regulations. The three issues I do hear about quite a bit are health care costs, taxes, and regulations are impacted small businesses, but another area is ensuring access to contracts, government contracts in the Federal government. My boss, Administrator Preston, believes that ensuring that small businesses get access to Federal contracts is not just an issue of fairness but it's also an issue of good business, and small businesses perform well as suppliers, they are often more nimble and more competitive, and create more flexibility and innovation than more of the larger businesses. Annually we negotiate at the SBA with Federal agencies to ensure they're meeting their goals up to 23% towards the small business contracts. The Federal agencies have just released a scorecard demonstrating that they have not all met that

requirement set by Congress but are working toward it, so we're working closely with Federal agencies to ensure that. We have many resources available at the SBA for small businesses wanting to launch. We have Small Business Development Centers here in the state, we have a local district office, we would encourage you to tell your friends and colleagues to work closely with. We have a Hub Zone program which provides a Federal contracting preference to small businesses in higher unemployment areas of the state, often in urban or rural areas. Also the 88 Business Development. All these programs we have. The next is SDBCP, that's Small Disadvantaged Business Certification Program. These are all great programs for small businesses to launch out, whether you're a woman on a small business or you're a veteran, it's important to have access to fairness within government contracting. And I will say at SBA we recently launched Patriot Express. You have great patriots in this state who are defending freedom around the world and our homeland, and it's an opportunity for when they're coming home from service that they may seek a Patriot Express loan through SBA, and that will be a loan up to \$500,000, about an 85% guarantee, for spouses, folks that lost loved ones, and also reservists who want to start and begin that entrepreneurial spirit. So that's terrific work that I enjoy talking about and seeing the success that we've been able to do in providing some of these loans to our patriots. We have a lot of resources towards matchmaking across the country. I know you all have been involved with that here, bringing in larger businesses with smaller businesses. So we want to do more to help facilitate more contracts for small businesses.

The entrepreneurial spirit is certainly keeping in pace with technology. If you looked back twelve years ago you never heard of EBay, but now you have EBay doing nearly \$6 billion in business, and there's a lot of folks who are small business owners are finding their way to make money in that area. Recently President Bush was in Nashville, where he met a lady, Cora Harrington, who started a bun company, she made bread, and ultimately expanded the business and has 260 employees, and she demonstrated what that entrepreneurial spirit can do. If you look at companies like Calloway Golf; Brian I know you know about Calloway Golf. Federal Express, Outback Steakhouse, Staples, Intuit, all these companies started with SBA support, with investment at the early age. Jenny Craig is one that I need to personally know more about. Seriously we're here, we want to serve, we want to help small businesses and ultimately we're here today to focus on regulatory issues that are concerned. But I thank you again for the hospitality and to be here, and I'll turn it over to you Mr. Chairman so we can begin the testimony. I know we have [unintelligible] testimony on-line but first we have our NFIB representative.

ANDY WARREN: Okay, real quickly I'd like to introduce

myself. My name is Andy Warren, I'm the state Director for the National federation of [unintelligible], NFIB since we were speaking in acronyms this morning. We are the largest small business organization in both the country and in the state of Iowa. I'm here today to share a story that a member told me about not long ago, and unfortunately much to my asking my member was not interested in me sharing his name, his business, or exactly where in Iowa his business is. He, like several small business owners, do have a very legitimate, whether it's legitimate or not in their minds, a very legitimate fear of retaliation from the Federal government. Now I'm not saying whether it's right or wrong but that's a legitimate fear [unintelligible].

I'll share the story with you today by telling you this is a retail business in rural Iowa, fifty or fewer employees, pays very well for that area of the state. And a little bit of the background. The business is operated by my member and his wife and one of their most productive employees really in this story would probably be considered the third top person in this organization. It's a person where my member can leave the business for several hours at a time, turn it over to this individual, and has every faith and confidence that the business will operate as though he were here. A little bit of background on labor in rural Iowa. You don't have an unlimited supply of talented labor in rural Iowa. That's no surprise to anyone sitting around this table. So unfortunately what this member has to do is sort of look the other way or behave a little bit differently with some of his members. For example, with this particular #3 employee at this operation, my member has bailed him out of jail for a couple of different OWI's, he's given him cash loans around Christmas time so he can buy his kids some Christmas presents, he's loaned him a car to get back and forth to work, a personal vehicle, and then when this employee were having some problems he even took him into his own house and gave him a place to stay. With an unlimited labor supply that's probably not something he would do for most employees. I asked my member why he did this and his rationale was really simple: a great employee 60% of the time is still better than a bad employee 100% of the time. So that was his rationale. Well, you sort of see what's happening here. This employee had a series of ups and downs and eventually just stopped showing up for work, and as typical for a small business, he stopped showing up on one of the busiest days of the year, but he was a no-call, no-show for several days. After numerous attempts to try and track him down nobody knew sort of where he was. His wife and mother had tried to have him committed for alcohol rehab; still no sign of him. So my member cut his final paycheck and waits for the employee to show up. Finally the employee shows up and receives his final paycheck, and there was a dispute over the size of that paycheck. As you might imagine there was a little bit of an exchange and the situation left with the employee saying that he will contact every government agency he can and see that this business is shut down, and as he's leaving he

calls my member and his wife crooks and you'll get what's coming to you. So that's how that relationship ended.

Now fast forward three weeks later. My member receives a letter from the U.S. Department of Labor. That letter basically says that in a week's time there will be an employee from the U.S. Department of Labor stopping down and they want to see essentially a Christmas list of their book work; employees' names, addresses, phone numbers, tax forms, time sheets, basically the whole nine yards. At this point in time the member called me and my advice was pretty simple: give them exactly what they're asking you. So the following week the Labor employee comes down. My member and his accountant spent several hours prepping ahead of time to get all the documents in order. The employee was down a couple of days going through all aspects of his financial records. After that was done my member was asked if Labor Department could interview some of his employees. I think he was told he didn't have to allow this but he went ahead and said sure, talk to any of my employees you want to. After a series of interviews were done with various employees we get to the findings, and it turns out after about twenty-five hours of work on my member's time, not to mention the accounting fees, it was found that my member's bookkeeping wasn't quite accurate; I think he was using a little more antiquated system. Not to get into too much detail but basically he was paying the 1st through the 15th, then the 16th through the last day of the month. So that first paycheck was actually sixteen days, so he had a few employees that were 86 hours or 88 hours and he wasn't paying overtime for those hours over 80. So he gets sort of the final bill from the U.S. Department of Labor. Basically it says you need to cut checks for this amount to these employees. The total amount of money in question here turns out to be about less than ¼ of 1% of his total sales. I mean, if [unintelligible] rolls through the town next summer he'll make that money back and then sense. So the point is this is not a large amount of money.

So our member cuts the checks and a few days later gets a letter, gets a call from the U.S. Department of Labor. They obviously want to see proof that the checks were cut, that they were cashed. So he goes to the back and he gets copies of all the returned checks, puts those in a registered letter – he was thinking ahead a little bit – puts those in a registered envelope and sends them off to the U.S. Department of Labor. About a week to a week and a half passes. He now starts getting basically a letter and/or a phone call each day, where's the checks, we haven't seen them. So he spends probably five hours with the local post office and the post office in Des Moines, Iowa, trying to figure out where this registered letter is, and to this day we're still not sure where this registered letter is. It's stuck in limbo somewhere between the Des Moines post office and the U.S. Department of Labor. So now obviously the employee at Labor wants to know where these

checks are, so long story short, he goes back down to the bank, recopies all the checks that were sent and cashed, and literally stands by his fax machine with the Labor employee at their fax machine, have you got it yet, and he sends them through one at a time. This faxing event went on under the notion of get these in now or there'll be some district court activity coming your way. So finally once and for all the checks are in and the situation is resolved.

Here's where the problem I had. It's really not a regulatory problem. It's not a problem of the way he was keeping his books was fine; not it wasn't, it was the same system that his father used so he just used the same thing. My problem is, I guess I would like to comment on today is, here you have a family-run business in rural Iowa paying taxes, the business owner and his spouse have clean criminal records, operated the business for years and years, never had any problems, you obviously have an employer who goes above and beyond as far as taking care of his employees, oftentimes to his detriment. Now contrast that with the employee who has been at least twice convicted of criminal theft, several OWI charges, not a model citizen, and who does our government choose to believe under this scenario? And that's probably the most disturbing thing. One of the points is the only call he got was from U.S. Department of Labor, not from IOSHA, not from Iowa Workforce Development. So what I'm curious about is what is sort of the filtering system of that frontline worker, and what duty and responsibility do they have to sort of figure out, hey, maybe this guy calling me is a little upset, maybe revenge is his motive rather than the cleanliness of recordkeeping. So that's my comment. Today, like I said, the situation has been resolved, but certainly there's an environment out there, certainly in this guy's eyes, that he's guilty until proven innocent. Thank you.

MALE VOICE: Comments from the Board? Tom, do you have any comments?

THOMAS HICKS: Good morning, my name is Thomas Hicks and I'm from the U.S. Department of Labor in Washington and my office was responsible for receiving a situation like this if someone would have filed a comment with the Department of Labor it would have come to our office before it went to the Assistant Secretary for review, and unfortunately in this situation we didn't get it as the small business owner chose not to file a comment. I've been doing this for about [unintelligible] about eleven years [unintelligible] I've been doing it for like ten years, and this is the first time that I heard that the small business owner had to verify that they actually mailed the checks and the checks were cashed. So that's something a little bit different from any other case. I'm curious about that. Because in some situations where you have a small business owner and a determination is made that overtime or back wages are due, those family employees or friendly employees or an employee in that situation would decide

that they don't want the back pay and they don't cash the check. That happens on many occasions. But I'm curious about the situation where the small business owner had to verify that information. Secondly, the Wage and Hours Division verifies any comments and complaints that come in before they do an investigation, because like I said you get the disgruntled employees and they decide whether it's a viable claim or not. Once they decide it's a viable claim then I think they have some responsibility to go forward and do their investigation. [Unintelligible] the small business owner decided not to file a comment so we never got a chance to view it.

MR. WARREN: I guess what I'm saying is that for that frontline worker what's the procedure for determining whether or not this is a legitimate claim? Like in this case there was no call to my member saying hey, we got an anonymous tip that this is going on, [unintelligible], what's your response?

MR. HICKS: How did the small business owner that it was that person who filed in?

MR. WARREN: Three weeks after this guy said I'm going to call every government agency, you and your wife are crooks, three weeks later...this is a place that had no inquiries from any federal government agency for twelve or fifteen years. Now three weeks after a charge is made there's a letter from the U.S. Department of Labor?

MR. HICKS: My thing is how did the small business owner know that that was the person that filed the complaint?

MULTIPLE VOICES: Because he said he would.

MR. HICKS: The employer, he said he did, but the Wage and Hours Division didn't verify that that was the person that filed the comment.

MR. WARREN: My member said look, I know who did this, and I know exactly why you're calling me. And the Department of Labor person said no, we're just verifying your...we can't tell you how we got your name, whatever your standard line is.

MALE VOICE: We have someone involved in the case who can shed some light on it. Identify yourself for the record.

MIKE STAEBELL: My name is Mike Staebell, I'm the Assistant District Director for the wage and Hours Division in Des Moines. So most likely the individual you're speaking about is probably my staff. But let me address a couple of things. Proof of payment that Thomas is talking about, we are required to document that the back wages were actually paid, and typically that comes in two forms. One is a receipt form, as Thomas mentioned, that the employee would sign off on verifying that they received these back wages. For whatever reason those weren't used in this case. But if the employer

either doesn't want to use them, because we can't require the employer to use those, or there's some other factor involved, then we are required to get proof of payment. So many times that comes in the form of a cancelled check, something from the bank, and we try to be liberal with the time of proof of payment we get. A photocopy of the check that was cut is irrelevant. There's got to be something that shows that check cleared. So for whatever reason that was the deal. So proof of payment in that manner is not unusual, as a matter of fact it's quite common. Your question, Andy, really has to do with what type of screening we do, and I can only assure you that as the guy in charge of training the staff that we train our staff very extensively on screening and not accepting a complaint that does not appear valid, okay? So we have a standard set of questions, we have a form, we ask questions: were there other people affected; how big is this company; how long have you worked there, blah blah blah. Now the thing, understanding completely where this employee is coming from, the background of that complaint is 100% irrelevant to our investigation. This person could be really a very bad employee...

MR. WARREN: That wouldn't have been an issue.

MR. STAEBELL: Unfortunately I understand where your member is coming from but to our folks, and quite frankly they're trained that way, the value of this employer's background or whatever, the only thing where are folks are trained to determine is does it appear that there was a valid claim here, or does it appear that there is a high likelihood that a violation occurred or could be occurring? And that's how our staff is trained. So they apparently found violations with this firm, so apparently there was some validity to the complaint. Now again, I realize that the person who did it was less than stellar shall we say. But as far as proof of payment that's how we handle it, and as far as taking complaints that's how we handle that. So I would be certainly willing to talk...if your member wants to give me a call when we're done I'd be more than happy to discuss it with him. Now our office is divided up between two large offices in our district, Omaha and Des Moines. I handle Iowa and I have a counterpart who handles Western Iowa and Nebraska, so it's conceivable that case was done out of the Omaha office. But in any event when we're done I'd be happy to give you my number and you could give me a call or your member could call me too, completely off the cuff and off the record, and I'd be happy to deal with it.

MR. WARREN: Our member doesn't have any interest at all in picking a fight.

MR. STAEBELL: I don't either.

MR. WARREN: What concerns me though, sort of what I'm hearing, is that the person making the charge can really be just about anyone saying most to nearly everything negative about that business

with any kind of specificity, and you'll go and ask those routine questions. My question is, is there a step between [unintelligible] the first contact my member got was a letter from, for the sake of argument, your office. Is there any thought to trying to diffuse the situation with a phone call initially, saying here are some concerns that we heard, can you dispute them or sort of what's your response, rather than sort of diving in and throwing all your financial statements on the table and we're going to come down and look through them.

MR. STAEBELL: Well I can tell you that there are situations where that very thing occurs, and it's so hard to know because it depends on the nature of the complaint. If this person is right upfront and they say something very basic: "I don't get overtime pay, I don't get time and a half for hours over forty in a week". "Well, can you prove that?" Well if you look at the records they'll prove it. On that type of a case we're not going to do much but schedule that case to go make a visit. Sometimes the issues are very vague or very questionable and we will generally ask that employee if we have any questions at all to prove it to us. "Well, sir, you're calling our office, you're making this claim, do you have something you can send us? Do you have check stubs, pay stubs, any personal records to document your claim?" And then that employee will be asked to do that. But again, Andy, to be totally upfront with you, if the allegation is really clear cut and straightforward the typically that complaint is just scheduled for a visit by one of our staff.

MR. HICKS: Mike do you have any idea, in your district, how many actual calls you get and how many you actually go forward with?

MR. STAEBELL: I can't give you raw numbers; I can give you percentages. Of all the calls we get, and we take all of our own calls pretty much, we have a toll-free number but they refer all the calls to us so we get them all, of the total number we get I would guess that probably approximately 50-60% are actually scheduled for investigation, so I would say somewhere between 40-50% of the people who call us wanting to file a complaint we do not [unintelligible] for many reasons; vagueness, validity, lack of coverage of the law, many many factors. Because of the sheer number of the complaints we get, in order to keep our heads above water we have to screen our complaints. So to think they're not screened at all, that's really not the case. But I just want to emphasize again, I totally understand where this employer is coming from, because unfortunately this type of scenario is not that unusual. The employee has been a problem for the employer and they continue to be a problem after they leave. That's unfortunate.

MR. HICKS: We have a lot of situations though where the employer and employee relationship is great, and the employer does a lot of things for the employee during that great relationship, and then when it becomes sour then you run into these situations. These are very common cases. A lot of times it's a competitor who might be

complaining about something they might be doing wrong. A business competitor [unintelligible].

MR. RIFE: I just want to say, Andy, as an elected official, you don't have any choice. You represent even the people who voted against you. As a state employee or as a federal employee you can't represent everyone who files a complaint no matter how bad they might be. They have to get the same response in my opinion. So I don't know that we dare go down that route, there was a bad character there, there was a bad character there, he doesn't need representation. I think that's a bad route to go and hopefully in Mike's case you can screen some of those out who do not have legitimate [unintelligible] and move on with the ones who do. But you can't shut people out of the system just because they may have some problems.

MR. OWENS: I just wanted to add to that you expressed concern about unprofessional behavior or bit of harassment of the employer. [sound problem] Yes I was saying that he expressed also concerns about unprofessional behavior by federal employees. That is also an area where we do work closely with [unintelligible] we work with inspectors general Federal agencies on these concerns, and I have referred these cases as well to Tom when there are agents of the government who are perhaps a little to badge happy if you will or are getting too threatening to employers. So I think that is something that should be noted and we will certainly look into that as well.

MR. WARREN: Mr. Staebell, you also mentioned that in training your employees there are sort of a series of questions or a form that your frontline workers kind of go through. I'd like to get a copy of that form.

MR. STAEBELL: Sure. I'm going to get you my card before we leave and I can certainly get you a copy of that form. It's actual a Complaint Form is what it's called, so you got it.

MR. WARREN: Thank you.

MR. OWENS: Andy, on the letter that was sent with the anonymous letter, nobody signed the letter?

MR. WARREN: Which letter?

MR. HICKS: The Department of Labor, the first letter [multiple voices]

MR. OWENS: Was it signed or was it just unanimous?

MR. WARREN: I haven't seen it, I'm assuming it was signed, there's a name. I'm not sure that's relevant to our conversation as to who that person was.

MR. SCHLAFLY: If that concludes the comments on the first incident, I believe there's someone on the telephone with another

comment. This is Mr. Helmke?

NORMAN HELMKE: Yes, yes, I'm here.

MR. SCHLAFLY: You may begin sir.

MR. HELMKE: Good morning. Thank you for the opportunity to appear before you today. My name is Norman Helmke, and I am Service Director of Administration for Featherlite Inc. Featherlite is a manufacturer of specialty trailers. I'm speaking to you today as a representative of our industry's trade association, the National Association of Trailer Manufacturers or NATM. The vast majority of our NATM members, 96%, consist of small family-owned manufacturers. We make light and medium-duty specialty trailers with gross vehicle weight ratings of less than 26,000 pounds, typically horse, livestock, car, light cargo, and utility trailers. The NATM has several guiding principles. We work as an industry to improve trailer safety and performance, and to provide educational tolls and events to our members. One of the single most important things we do is to proactively address regulatory issues since individually or members do not have the time and resources to devote to work through issues that affect the industry as a whole. We encounter bureaucratic red tape like many regulated industries, but one challenge has particularly caused increasing hardship to our members.

We have spent the last two years educating federal officials about the effect on our industry of being misclassified within a category of vehicle that is unlike ours in many important respects. The issue is that in delivering trailers to our dealerships for retail sale it is most efficient to make deliveries in combinations of two trailers when possible. For certain deliveries we have found that the federal length limits that were intended for heavy commercial truck tractors towing multiple freight-carrying trailers also apply to us. Consequently we must observe what amounts to a patchwork of state laws because there is no statutory or regulatory definition that would otherwise distinguish longer combination vehicles, also known as LCV's, from our relatively small and lightweight combinations. This raises the possibility that a trailer-transporter combination may be authorized in the state where the trailers were manufactured but not in the state where the dealer is located, or not in one or more of the states along the transit route.

There are several fairness issues presented here. First, many other longer, heavier transporter vehicles are allowed all over the national network of highways. You see them every day; auto transporters, maybe you have even also seen boats or truck/tractor transporters. These and other specialty transporter combinations have exemptions which allow them to operate in all states at lengths of up to 97 feet and far beyond the 26,000 pound outer limit of our trailer-transporter combinations weight. Second, our industry is being regulated by a statute that was arguably not intended to apply and

should not apply. If you read the transcript of the debate that occurred when the LCV provision was adopted it is clear that Congress was singling out the heavy freight-carrying truck/tractor-semi-trailer combinations, fully loaded with cargo, those which were associated with extra wear and tear on the roads. The LCV rule should not apply to us because 1) LCV's are by definition cargo carrying, whereas when we transport our trailers in combination the trailers are the cargo; 2) our trailers are not pulled by a truck tractor, as in the case with LCV's; they are towed by a general purpose one-ton pickup or flatbed truck; 3) the maximum weight of two of our trailers and the tow vehicle is less than 26,000 pounds and does not come close to the maximum weight of 80,000 pounds allowed for the heavy commercial LCV's, so road wear is not an issue; 4) like autos, boats, and other delivery combination vehicles our specialty trailer combinations exist solely for the purpose of delivering new and empty inventory for resale; 5) the trailers are units in the combination are only for a relatively short number of miles, which is not the case with LCV's.

The consequences of being legally identical to an LCV are simple: it costs the consumer more money to own one of our specialty trailers. The end user of our product is often running a small business themselves, and this unfair federal predicament has a clear ripple effect on them. The fee we impose for the freight charge is not collected by us as profit; we must pass on 100% of the costs of the extra freight charge directly as a result of having to transport only one trailer instead of two. Finally the patchwork effect means the manufacturers in some states could have an unfair advantage over others in the industry. Enforcement is left to the states and it is not uniform. For example, there are several states that, technically speaking, should permit these combinations but it is hard for our drivers to argue that point when pulled over at the side of the road. In addition the dealerships have to be located on the transit routes in states that permit efficient combinations deliveries. Those dealers have an unfair competitive edge over dealerships in states where longer combinations are not allowed. Manufacturers closely protect their dealer relationships and this is one of the reasons why. Yet it is not the market that creates this competitive condition; it is the unfair regulation of our industry by the Federal government and irregular treatment by the states. We would urge that when the Administration contemplates recommend changes to the reauthorization in 2009 of our nation's surface transportation program, that our industry's problem be given consideration. We would urge that the Administration support a technical correction to the law so that this very narrow delivery operation is authorized in a length at least consistent to the overall length currently allowed for other types of combination vehicle deliveries. Thank you for the opportunity to represent the National Association of Trailer Manufacturers today.

MR. SCHLAFLY: Thank you. If I could try to distill your

comments, sir, and then ask for comments from the Board, you have two main issues. One, that the federal regulation as written needs to be clarified, and secondly, that the current framework permits states to impose different standards which makes it difficult for your members to operate. If that's a fair synthesis of what you said...

MR. HELMKE: Yes it is. That's exactly what we're talking about.

MR. SCHLAFLY: And do the members of the Board have any comments? Ms. Kaiser? [Unintelligible]

INEZ KAISER, MD: [Unintelligible]

MALE VOICE: I was wondering, does this regulation take effect because of the length, you're saying, of two trailers put together?

MR. HELMKE: Yes. What happens, on the LCV regulation that we fall under, and I say inadvertently fall under, the maximum length when you hook two trailers together in a combination tow package is 28 feet, six inches. The trailers that we're talking about primarily, the most popular lengths in our industry for these type of trailers, horse, livestock, car trailers, primarily what they call a "goose neck" trailer if you're familiar with that terminology, when they haul together, we might have one trailer for example that is say 27 foot long from nose to tail, and we have the other length of trailer that's very popular that's around 31 feet length overall nose to tail. If I hook those two trailers together I now have an illegal combination so I can't transport those two trailers. So we have to transport the longer trailer, the 31 foot trailer, by itself. On the other hand there are some states that even when we pull the shorter trailers together we're not allowed to go through the dang state. Iowa, for example, there's nothing in the statutes that we are aware of, they should be permitted because they're not excluded here in Iowa, but the state enforcement people primarily follow the federal regulations on this thing, and that's what they're using. So there are many states like Iowa that don't permit it so we have to abide by their regulations. Primarily what we're dealing with is just a more efficient way of transporting the trailers. We're trying to keep the vehicles off the road and just keep the cost to the end user down, is basically what we're trying to accomplish, that type of stuff.

MR. SCHLAFLY: Mr. Johnson, do you have...

MR. JOHNSON: Without presuming to respond on behalf of my fellow Board members, I think this problem might be a little different from what we typically confront because our mandate is addressing the unfair application of existing regulation, and if I understand your statement correctly it's that the regulation as written is either ambiguous or unfair?

MR. HELMKE: That's generally right. You are correct sir.

MR. JOHNSON: I feel your pain completely because I'm in the beer business and we have the same differentiation of standards, not just among states but also among municipalities. So I know where you're coming from. So I think we received your comments. I don't know if there's anything further for us to do?

MR. SCHLAFLY: Mr. Helmke, in your conversations or correspondence with the Department of Transportation, what has been the response?

MR. HELMKE: there has been some interest on that. We have been basically trying to educate the various federal officials in Washington. We have made several trips over there to educate them to the situation. We've made numerous contacts and visits with the various senators and Congressmen that are involved with the transportation committees. Basically what we're trying to do right now is educate them and what we're trying to do is just essentially get ourselves a definition that would allow us to fall into the section of the federal regulations that apply to automobile transporters or boat transporters, the truck-tractor transporters, the specialty type of vehicle, there's a provision in the federal regulations that would allow us to fit in there and that's what we're trying to accomplish, just get a technical correction done.

MR. SCHLAFLY: And would you also want then a federal preemption of whatever different state standards there are?

MR. HELMKE: Well these operations are deemed to be commercial operations when we deliver from our factory to our dealer, that's deemed a commercial operation. We operate with drivers that have CDL's and stuff like that. So there are various things that we'll do that, but yes, we would want a federal preemption of that, but that's the same thing that applies to the other types of transporters, automobile transporters and the boat transporters etc., they all fall under this one section of the federal regulations that provide for this preemption.

MR. OWENS: Mr. Helmke, thank you for your testimony, and we will work closely with our Office of Advocacy and Regional Advocate Bailey on this issue, as well as our congressional committees' jurisdiction for the reauthorization of the service transportation. So thank you again.

MR. HELMKE: Okay, thank you very much.

MR. OWENS: Any other comments? Are there any comments? We are certainly open for conversation. Any agencies here have any comments or the State Department of Economic Development?

MR. BAILEY: Nick? Ombudsman Owens? I'd like to echo this specialty trailer manufacturing industry. It's important in Iowa and it's important in all our Midwestern states here. There are a

remarkable number of cottage industries that build horse trailers and cattle hauling trailers and even lawnmower trailers and very small golf cart trailers, and they're being regulated as if they were Fruehauf and Great Dane. They just continually run up against this huge over the road trailer manufacturing company regulation, and any efforts that the National Ombudsman can put into the National Traffic Safety Administration Act so that they understand the difference between these combinations of vehicles that are involved would be meaningful. I'm sure that the Iowan NFIB and member Johnson, this Featherlite Corporation is a good-sized company, but there are others that are simply backyard trailer welders and manufacturing, and they are an important part of our transportation scene. Thank you.

MR. OWENS: Thank you. Any other comments before we conclude our business? Mr. McFarlin?

BOB MCFARLIN: Yes sir.

MR. OWENS: McFarlin Body Shop.

MR. MCFARLIN: And Router Technologies.

MR. OWENS: Router Technologies, yes sir.

MR. MCFARLIN: Can I make comments?

MR. OWENS: Yes sir, please.

MR. MCFARLIN: We have two businesses; one's a body shop, and we're controlled by [unintelligible] and I have been in the business since the body shops were an honorable profession. Now we're struggling to make a living because the insurance companies are paying their executives millions of dollars and building big buildings and they could care less about us. I made an estimate for \$1810 three weeks ago, I faxed a copy to an insurance company in Denver, Colorado and a lady faxed me back her copy with \$320 less than mine. I sent her pictures of the car -- it was hit by a deer -- and I called her and I said, "Why are you only paying \$320 less than what I got?" And she said, "Well, I put your estimate in my computer and it spit out this and this is what we'll pay." So I told her, "How can you sit in Denver Colorado and tell me what it's going to cost to fix a car that you've never seen? How many cars have you worked on?" And she said, "I've never touched a car." You see what I mean? The body shop industry is going downhill and it's going downhill fast. You can't hire a man to work in a body shop. Nobody wants to go into it, we can't pay them anything. So that's one complaint I've got. Then the other deal is we invented some woodworking tools, got patents on them, we've got about \$42,000-45,000 for a lawyer for a patent. We've got distributors in Canada and the United States; we've got two in London and one in Brisbane, Australia, and one in Norway. So now a company that makes routers has infringed on our machine and we called them, and they said

yes we know we've infringed on you but you can't afford to fight us.

Now I was in World War II in the Pacific, I was recalled and spent twenty-one months in the Korean War, so I could live under a free enterprise. Now I'm making money that I'm ashamed to admit what we're making because people that have never been in the service are telling me that I'm going to do the work and they're going to make the profit. It's not fair. And also, and I can't tell you that the gentleman with me knows, but there's a law passed in 1964 by Kennedy and Perry in Washington that states that big business can not state policy to a smaller business because it affects the profit of the small business. We had a meeting with people from Senator Harkin in the Federal Building and Senator Harkin said "Chuck, I'm going to have to get back to you." Well that would be the 15th of this month will be five years. Kind of slow getting back to me. I call him four times a year every quarter. [Unintelligible] said, "You call so many times maybe I can help [unintelligible]. I want to talk to the person that promised me something."

MALE VOICE: We're going to pass that on to the senator.

MR. MCFARLIN: Huh?

MALE VOICE: We're going to pass that on to the senator.

MR. MCFARLIN: So anyway, we as a nation are in dire trouble. The big corporations are taking all the money to the top drawers. There's a company in Des Moines that just paid its CEO a \$14 million bonus. He don't do anything. He sits up in a nice office and has his coffee brought to him. The people that are keeping that company going are the people in the field, the people on the telephone down in the lower drawers. And this is happening in every big business in the country.

MR. OWENS: Well we'll tell you sir, I certainly don't know where we'll go on the issue of the body shop and the insurance companies, but I will take that back and see what kind of conversation we can have back in D.C. However, on your technology issue I will contact USPTO's patent trademark office on your concerns in that case.

MR. MCFARLIN: I wish you would, because my son is a brilliant person, he wrote articles for thirteen years for Better Homes and Gardens on woodworking tools, and these guys call him and talk to him on any kind of a problem you want, you know, on woodworking.

MR. OWENS: We'll certainly follow up.

MR. MCFARLIN: I'd appreciate it.

MR. OWENS: Thank you for being here.

MR. MCFARLIN: Did you say the body shop has nothing to do here?

MR. OWENS: No, I said I didn't know how we could address your concerns.

MR. MCFARLIN: Well I'll tell you what. There's no way you can.

MR. OWENS: Okay, you may have answered my question. [unintelligible] You're with O'Mara Auto Body Shop?

MR. O'MARA: O'Mara Auto Body. My name is Tom O'Mara and I appreciate the chance to speak to everybody here today. I've been in business in Hartsdale, Iowa for fifteen years as the owner and operator of O'Mara Auto Body and one of my biggest concerns is how the insurance industry is treating small businesses in my trade. [Unintelligible] the gentleman atop the hall there is one of the perfect examples. This year the Iowa legislator passed a law that would increase the labor for part-time employees, the minimum wage, they raised that, which is an attack on the business owner to come up with more money so that they can hire these people and keep them working. And also the cost of living expenses has skyrocketed, the cost of fuel has gone up, the cost of taxes has gone up, everything has gone up. In the past three years, it's actually been three and a half now; the insurance industry has allowed \$50 an hour for labor rates. They have not let us raise our labor rates. The first year I decided to raise my labor rate from \$50 to \$52 an hour, which if you look at the average person who gets a raise, they normally get two raises a year; usually it's a fifty cent raise per hour. Now the \$2 an hour that I raised my labor rate is not unreasonable over a three-year period. And the cost of materials has skyrocketed, sometimes 7% a year, sometimes 14% a year. I was charging \$32 per refinish hour for the material costs for the last three years. At the first of the year I raised that to \$32 an hour. The insurance industry tries to keep a thumb on this. They basically want to keep everything as low as possible and not let the collision repair industry make a profit like they have in the past.

I'll give you a perfect example. The Farm Bureau Financial this year at the first of the year like I said [unintelligible] from \$50 and \$30 to \$52 and \$32 to offset some of the differences, and I had five claims with them since the first of the year; they had absolutely no problem paying what my labor rate was. In July I had one of their claims adjusters question my labor rate and my material charges, and I explained to them the same thing that I just explained to you: that the cost of living has gone up, the cost of materials has gone up, everything has gone up except my wages. Well at that point he had understood and he said he'd go ahead and pay it. Two weeks later I got a job in from them and they had written and estimate on it and it was \$50 an hour and \$29 for materials. So I went ahead and fixed the car and sent a [unintelligible] to them for the difference, and the [unintelligible] got involved in it too, and this gentleman called me up and he was very upset, and he said, "I'm here to tell you that this is the last job that

we will pay you \$52 and \$32 on. If you want to do work for the Farm Bureau you will do it for \$50 and \$29.”

Now when this stuff gets turned over to the State of Iowa to the Iowa Insurance Division, they always come up with a kind of a deal stating that they have done absolutely nothing wrong and it gets rushed under the table. There are so many small businesses that are being run out because of these insurance companies playing these bullying tactics. Something needs to be done about it. The McCaron-Ferguson Act, which is an act at the federal level, has been basically sidetracked, they always dodge anything to do with that. As far as I’m concerned what needs to happen is the federal government needs to take a position here and take the authority away from the state and make it a federal level job, is what needs to happen. We can eliminate a lot of this stuff. Any questions?

MR. OWENS: Thank you very much sir, you were very eloquent. It’s not falling on deaf ears; I have to go back to D.C. and see how we can address any of these concerns, how you liaise with what state authorities, who we can bring these attentions to. This is the first hearing in almost two years that I’ve heard the concerns in the body shop industry.

MR. O’MARA: We have brought this up to Susan Foss.

MR. OWENS: Who?

MR. O’MARA: Susan Foss, the Insurance Commissioner and Theresa [unintelligible] the prior Insurance Commissioner, and we’ve taken it to the governor’s office. Nothing ever happens. What’s going to happen is eventually, West Cadillac just went to \$105 an hour in their shop. If you have mechanicals done in their shop it costs you \$105 an hour. So if they have an accident and the water pump is broken, they send that to West Cadillac, they charge \$105 to fix the water pump, but to put a fender on they can only charge \$50. And the insurance companies control this.

MALE VOICE: And they’ll pay \$105.

MR. O’MARA: They will not pay \$105 to the body shop.

MALE VOICE: Just to clarify. There’s an accident that destroys the water pump, you turn that in to the insurance they’ll pay that \$105 an hour labor fee.

MR. O’MARA: Right. And what’s going to happen is, and it’s not going to happen in my lifetime, but I love working at this. And I have a tremendous following in Des Moines after all the years, you know. But what’s going to happen is that all the little shops are going out of business. You’re going to end up with six big shops. Then it’s going to cost a thin mint to have your car fixed. And people now, there’s nobody coming into this business because you can’t pay them

any money, so we're losing. And now we just worked on a Lexus last week, and this car was probably a \$50,000-75,000 car, if she wants it done right she won't want somebody that they got up on the street working on her car. Now we've got three-stage paints where you have to paint this Lexus with a three-stage, it was a white but it has gold metallic in it, gold curl, that's what I'm trying to say. And there are not many people who can paint three-stage paint. So bad deal.

MALE VOICE: I know there's nobody from the patent office here but on the subject, how does one do that? Is the only recourse, does anybody know [unintelligible]?

[multiple voices]

MR. OWENS: That's what I want to look at with the USPTO to see what the process is.

MR. MCFARLIN: You see, I don't think that a business should be able to steal a patent from a small business because they know the business can't afford to fight it. We called the lawyer and he said, well, I'll get back to you, so he sent us a letter that said I would have to have \$83,000 down before I started. That's starting. We went through all this trouble, invented this deal, for instance when you put a router on a table and it comes up the table, to adjust that router up and down again, you have to reach underneath the table and find a knob, and people my age it's not easy to get underneath there. We invented a thing that you put on the router that replaces that knob, and we have a little porthole here, aluminum cover, and we just put a crank in there and crank it from the top, it goes up and down. Simple as ABC, you know? And now there's [unintelligible] companies coming out with this.

KRISTIE HIRSCHMAN: As the Assistant Ombudsman for the State of Iowa for small business we do get a number of complaints about the Insurance Commission and their inability to resolve complaints such as {unintelligible}. Part of it is the statutory limitations that they have. There is a section about expanding [unintelligible] are relevant to our comments that we make on any legislation that they propose, and I'll give you my business card before we leave [unintelligible].

MR. OWENS: What we do need is a detailed comment written regarding that particular issue, the router technologies issue. Regarding your concern, identifying the company etc. so we can address that with the PTO. So make sure I give you my card before you leave.

MR. MCFARLIN: Oh thank you.

MR. OWENS: Thank you. All right, any other comments. All right, I feel like I'm auctioning here, we keep asking any other comments? With that I want to leave you my direct phone number

and my e-mail so if I can ever be helpful to you directly or any of your constituents please be in touch. My office number is (202) 205-7360, and my e-mail address is Nicholas.owens@sba.gov. And we have a toll-free number, (888) REG-FAIR.

MR. MCFARLIN: Did you say you're going to give me your card?

MR. OWENS: Yes sir I will.

MR. MCFARLIN: Thank you.

MR. FOLSOM: For those of you that are interested we do have a resource guide over here [unintelligible] information that you may find useful.

[Crosstalk]

[END DES MOINES, IA.MP3]